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Reports

PUBLIC PROSECUTOR v. SAM AH KOW & ANOR.

[A. Cr. J. (Storr J.) December 18, 1954]

[J. B. — Criminal Appeal No. 36 of 1954]

Weights and Measures Enactment No. 72 — Proof of method of weighing lorry — Prima facie case — Evidence Ordinance, 1950, s. 3.

This was an appeal by the Public Prosecutor against the acquittal of the respondents. At the trial the learned Magistrate called on the respondents for their defence. The only evidence called by the respondents was that of the second respondent but this evidence did not rebut the evidence of the prosecution in any way. It was submitted on behalf of the respondents that the method of weighing the lorry was unsatisfactory and not accurate.

Held: (1) the learned Magistrate in calling the respondents upon the defence must have been satisfied that the prosecution had proved its case if there was no evidence of rebuttal and as there was no substantial evidence in rebuttal he ought to have convicted the respondents; (2) bearing in mind the definition of "proved" in s. 3 of the Evidence Ordinance there was in this case sufficient evidence upon which the learned Magistrate could call on the respondents for their defence and upon which he could convict them in the absence of rebutting evidence.

MAGISTRATE'S CRIMINAL APPEAL.

I. Talog Davies (Federal Counsel) for the appellant.

A. J. Braga for the respondents.

Cur. Adv. Vult.

Storr J. : — In this case the learned Magistrate in the Court below called on the respondents for their defence, thereby holding that there was a *prima facie* case against them which, if unrebutted, would warrant a conviction; in other words, he held that he was satisfied that the prosecution had proved its case, if there was no evidence of rebuttal. He must be taken to have accepted the evidence as to the excess weight carried by the lorry driven by the first respondent and owned by the second respondent.

The only evidence called by the respondents was that of the second respondent which could not be said to rebut the evidence of the prosecution in any way.

The respondents by their Counsel, Mr. Braga, submitted that the method of weighing the lorry was unsatisfactory and not accurate. However, bearing in mind the definition of "proved" in section 3 of the Evidence Ordinance, I consider that there was sufficient evidence from which the learned Magistrate could call on the respondents for their defence, and having called on them for their defence he should not then have decided that such evidence was not sufficient to prove the prosecution case, or that Ex. P2A and B which gave the cubic capacity of the timber on the lorry (which was planks and not logs) as mentioned in the Forest Department's circular, in any way lessened the weight of the evidence of the 3rd prosecution witness, Inspector Jagjit Singh, as to the weight of the lorry being in excess of the permitted weight. Had the learned Magistrate considered the evidence in the light of sec. 3 of the Evidence Ordinance, he could have come to no other conclusion than that the respondents were guilty of the offence with which they were charged.

There is no doubt that the respondents may have been misled by the Forest Department's permits (Ex. P2A and B) and their circulars as to capacity and tonnage, but I think that such matters only go to mitigation of any sentence.

I allow the appeal; the orders of acquittal will be reversed and the respondents will be convicted of the offence with which they were charged.

As to sentence, in view of the possible misunderstanding of the permits and circulars of the Forest Department, I will only impose a fine of $50 on each of the respondents, or in default 2 weeks imprisonment.

Appeal allowed.

Solicitors for the respondents: *Braga & de Souza.*